

EXHIBIT D

Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

4 _____)
5 UNITED STATES OF AMERICA,)
et al.,)
6)
Plaintiffs,) Civil Action
7)
vs.) No. 1:21-cv-11558-LTS
8)
AMERICAN AIRLINES GROUP)
INC. and JETBLUE AIRWAYS)
CORPORATION,)
9)
Defendants.)
10)
11 _____)
12)
13)
14)

15 DEPOSITION OF NATHAN H. MILLER, Ph.D.

16 Washington, DC

17 August 17, 2022

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21
22
23
24 Reported by: John L. Harmonson, RPR

25 Job No. 213777

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2 Compete." And it begins with the sentence: 09:55

3 "Competitor collaborations sometimes do not end 09:55
4 competition among the participants in the 09:55
5 collaboration." 09:55

6 Do you see that? 09:55

7 A. Yes, I do see that. 09:55

8 Q. Do you agree that competitor 09:55
9 collaborations sometimes do not end competition 09:55
10 between the participants? 09:55

11 A. It's not something I've studied 09:55
12 broadly. I see it's a sentence here. I imagine 09:56
13 that's possible. I mean -- yeah. 09:56

14 Q. Let me back up, then. 09:56

15 Have you considered in your work with 09:56
16 respect to the NEA whether the collaboration ends 09:56
17 competition between American and JetBlue? 09:56

18 A. "Ends competition" is a term that I 09:56
19 don't have a precise definition for. But I did 09:56
20 analyze the NEA specifically, and I determined 09:56
21 that it would effectively align the incentives of 09:56
22 JetBlue and American in the routes that touched 09:56
23 the NEA airports. And if that is interpreted as 09:56
24 ending competition, then I would say that 09:57
25 JetBlue -- that the NEA is likely to end 09:57

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2 competition between those two airlines along the
3 antitrust markets that I've outlined.

4 I've also explored whether it would
5 affect competition more broadly than that, of
6 course, and that's discussed in my report.

7 Q. Let me see if I can try this again.

8 The top of 19, the DOJ collaboration guidelines
9 say, quote: "Where the nature of the agreement
10 and market share and market concentration data
11 reveal a likelihood of anticompetitive harm, the
12 agencies more closely examine the extent to which
13 the participants in the collaboration have the
14 ability and incentive to compete independent of
15 each other."

16 Do you see that?

17 A. Yes, I do.

18 Q. Have you done that?

19 A. Have I analyzed the agreement and
20 market shares and market concentration --

21 Q. No, the second part. Sorry, my bad.
22 Have you examined the extent to which the
23 participants in the collaboration have the
24 ability and incentive to compete independent of
25 each other?

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2 A. Yes, I have.

3 Q. Okay. And what is your conclusion on
4 that?

5 A. My conclusion is that the NEA
6 effectively aligns the incentives of American and
7 JetBlue in a number of antitrust markets that are
8 listed in my report, and may also align
9 incentives in a way that relaxes competition more
10 broadly than the -- than along the antitrust
11 markets that are enumerated in the report and
12 could extend to transatlantic routes or into
13 coordination in the industry more broadly or in
14 routes on which American and JetBlue compete that
15 are -- that do not touch any NEA airport.

16 Q. Okay. So you went to incentives. I
17 want to go back to ability, because this says
18 "the ability and incentive." Do you see that?

19 A. Yes, I do.

20 Q. Under the NEA agreements, do American
21 and JetBlue retain the ability to compete
22 independent of each other?

23 A. Yes, they retain the ability to
24 compete independent of each other.

25 Q. Okay. It goes on to say: "The

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2 agencies are likely to focus on six factors." 09:59
3 The second of which, (b), is "the extent to which 09:59
4 participants retain independent control of assets 09:59
5 necessary to compete." 09:59
6 Do you see that? 10:00
7 A. Yes, I see item (b). 10:00
8 Q. Under the NEA agreements, do American 10:00
9 and JetBlue retain independent control of assets 10:00
10 necessary to compete? 10:00
11 A. My understanding is that the NEA does 10:00
12 not affect control of assets. 10:00
13 Q. At the end of this Section 3.34, the 10:00
14 last sentence says, quote: "For example, when an 10:00
15 agreement is examined subsequent to formation of 10:00
16 the collaboration, the agencies also examine 10:00
17 factual evidence concerning participants' actual 10:00
18 conduct." 10:00
19 Do you see that? 10:01
20 A. Yes, I do. 10:01
21 Q. Have you examined factual evidence 10:01
22 concerning American and JetBlue actual conduct 10:01
23 since implementation? 10:01
24 A. To some extent, yes, I have. 10:01
25 Q. Do you report in either your initial 10:01

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2 or reply report any conclusions based upon 10:01
3 evidence that you have found that the 10:01
4 participants' actual conduct since implementation 10:01
5 is anticompetitive in some way? 10:01
6 A. I'm sorry. Could you restate the 10:01
7 question? 10:01
8 Q. Sure. 10:01
9 Do you report any conclusions to the 10:01
10 effect that your examination of the participants' 10:01
11 conduct subsequent to formation indicates 10:01
12 anticompetitive behavior or outcomes? 10:01
13 A. Some information that I've examined 10:02
14 goes to that point. For example, it is relevant 10:02
15 that as American and JetBlue have been 10:02
16 coordinating capacity, they generally have 10:02
17 succeeded in reaching an agreement about what 10:02
18 capacity should be along the routes that touch 10:02
19 the NEA airports. And that is described in 10:02
20 either my report or my reply report. 10:02
21 And in my reply report, I also examine 10:02
22 data on the frequency with which consumers use 10:02
23 codeshare flights, and that also informs my 10:03
24 opinions. 10:03
25 Q. Anything else? 10:03

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2 A. My report considers a number of 10:03
3 things. As you know, it's quite long, and 10:03
4 nothing comes to mind at the moment, but I may be 10:03
5 missing something. 10:03

6 Q. Just to help you, the question is: 10:03
7 Did you come across any evidence regarding the 10:03
8 participants' actual conduct after formation that 10:03
9 you find relevant to a conclusion that the NEA is 10:03
10 having anticompetitive effects? 10:03

11 You mentioned codesharing, which we'll 10:03
12 talk about, and you mentioned this idea that 10:03
13 they've achieved agreement. 10:03

14 A. I believe it was deposition testimony. 10:03
15 And like I said -- 10:04

16 Q. What was deposition testimony? Sorry. 10:04
17 A. That deposition testimony that while 10:04
18 coordinating capacity, American and JetBlue have 10:04
19 been able to reach agreements about the capacity 10:04
20 levels on different routes. 10:04

21 Q. Sorry to be sort of flippant about it, 10:04
22 but so what? What does that mean? Did they 10:04
23 reduce capacity? Did they increase capacity? 10:04
24 Are you just saying they reached agreement? 10:04

25 A. They reached agreement. It's actually 10:04

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2 Q. Are you at least generally aware that 11:55
3 his approach in his 2013 expert report was to 11:55
4 make predictions regarding the effects of the 11:55
5 American-US Airways merger based upon a 11:56
6 retrospective study of the United-Continental 11:56
7 merger? 11:56

8 A. No. 11:56

9 MR. DeRITA: Objection to form. 11:56

10 BY MR. WALL: 11:56

11 Q. You didn't know that? 11:56

12 A. No, I did not know that. 11:56

13 Q. Are retrospective analyses of 11:56
14 transactions relevant or useful for determining 11:56
15 the reliability of results from merger 11:56
16 simulations? 11:56

17 MR. DeRITA: Objection to form. 11:56

18 THE WITNESS: That depends on the 11:56
19 implementation of the retrospective and on how 11:56
20 similar the event -- the historical event being 11:57
21 described is to the event being examined in the 11:57
22 model. 11:57

23 To put some meat on that, in the case 11:57
24 of United-Continental, and in the case of 11:57
25 American-US Air, both of these events involve a 11:57

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2 merger that was approved by the Department of 11:57
3 Justice subject to divestitures which ameliorate 11:57
4 anticompetitive concern. 11:57

5 And so the usefulness of a comparison 11:57
6 of the estimated effects in a regression to a 11:57
7 simulation result may not be informative even 11:57
8 setting aside questions of implementation. 11:57

9 BY MR. WALL:

10 Q. I was asking something a little bit 11:57
11 more specific. Do you find any utility in using 11:58
12 a retrospective analysis to determine whether the 11:58
13 results of a merger simulation are reliable? 11:58

14 A. Again, it can be informative. But 11:58
15 whether it is informative will depend on the 11:58
16 quality of implementation and on the 11:58
17 comparability between the event being studied and 11:58
18 the retrospective, and the event being studied in 11:58
19 the simulation. 11:58

20 And in my previous answer I gave you 11:58
21 an example for why we might not think that would 11:58
22 be the case, comparing the merger events that 11:58
23 occurred in the airlines over the last 14 years 11:58
24 to the simulation model of the NEA that I use. 11:58

25 Q. You wrote an article in 2017 published 11:58

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2 in Econometrica entitled "Understanding the Price 11:58
3 Effects of the Miller-Coors Joint Venture"; 11:59
4 correct? 11:59
5 A. That is true. 11:59
6 Q. And you did a retrospective study of 11:59
7 the Miller-Coors joint venture in that paper, did 11:59
8 you not? 11:59
9 A. Yes, I did. 11:59
10 Q. And one of your findings is that the 11:59
11 results of your retrospective study were not 11:59
12 consistent with the predictions of a unilateral 11:59
13 effects model; correct? 11:59
14 A. Yeah. The data suggested that the 11:59
15 joint venture caused coordinated effects that 11:59
16 caused the unilateral effects model to underestimate 11:59
17 price effects of that transaction. 11:59
18 Q. And along the way to that conclusion, 11:59
19 you wrote in your paper that the data rejected 11:59
20 the hypothesis that the effects were unilateral 11:59
21 effects. Correct? 11:59
22 A. Yes, that's correct. 11:59
23 Q. So have you done anything in your work 11:59
24 here to determine whether the predictions that 11:59
25 you get from your merger simulation model are 12:00

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2 even in the range of price elevation that has 12:00
3 been found in previous airline merger 12:00
4 retrospectives, including your own work? 12:00

5 A. That's not a comparison that I have 12:00
6 sought to do because I don't view it as a useful 12:00
7 way to validate the model. 12:00

8 Q. Do you know what range of fare effects 12:00
9 has been found in previous airline merger 12:00
10 retrospectives? 12:00

11 A. There are so many of them that I 12:00
12 wouldn't want to characterize the results of the 12:00
13 full literature. 12:00

14 Q. What's the highest documented fare 12:00
15 effect that you know of from the literature? 12:00

16 A. You're asking for a specific number. 12:00
17 I can't give you one. 12:00

18 Q. I don't remember. Do you have 12:00
19 Professor Town's reply report in front of you or 12:01
20 not? 12:01

21 A. I may. 12:01

22 MS. NELSON: Yes. 12:01

23 BY MR. WALL:

24 Q. You do. Take a look at Paragraph 111 12:01
25 which is on page 64. 12:01

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1	N. MILLER	
2	A. I'm sorry, what paragraph number?	12:01
3	Q. 111.	12:01
4	A. Paragraph 111.	12:01
5	Q. Yes.	12:01
6	MR. DeRITA: Page 64.	12:01
7	THE WITNESS: I was thinking 164.	12:01
8	BY MR. WALL:	12:01
9	Q. I said one without the other. That's	12:01
10	my fault.	12:01
11	A. Yes, I do see this.	12:01
12	Q. Okay. In the context of what he's	12:01
13	arguing, Dr. Town says the following: "It is	12:01
14	worth noting that these papers generally find low	12:02
15	single-digit impacts on price one way or the	12:02
16	other. For example, Le," L-e, "(2019) finds a	12:02
17	5 percent decrease in price in nonstop overlap	12:02
18	markets and a 5 to 6 percent increase in price in	12:02
19	connecting overlap markets (and a combined	12:02
20	overall average increase in price of about	12:02
21	3 percent). Das," D-a-s, "(2019) finds results	12:02
22	of a similar magnitude."	12:02
23	Is that summary by Dr. Town consistent	12:02
24	with your understanding of the findings in the	12:02
25	airline merger retrospective literature about the	12:02

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2 range of fare effects from airline mergers? 12:02
3 A. I believe that Professor Town has 12:02
4 accurately described these two articles. But 12:02
5 I'll point out again that the events that they're 12:02
6 studying are consummated mergers that were 12:02
7 approved by DOJ subject to divestitures that 12:02
8 ameliorated the DOJ's competitive effects as I 12:03
9 understand them. 12:03
10 Q. That's not true with respect to 12:03
11 Delta-Northwest, is it? 12:03
12 A. Did he study Delta-Northwest? 12:03
13 Q. I'm just saying that the 12:03
14 Delta-Northwest merger was approved without 12:03
15 remedies. 12:03
16 A. Yeah, I understand that. Yeah, I 12:03
17 agree with that. But you were asking about these 12:03
18 two articles. 12:03
19 Q. Just putting aside the details of 12:03
20 these articles, is the statement that the 12:03
21 published papers generally find low single-digit 12:03
22 impacts on price consistent with your 12:03
23 understanding of that literature? 12:03
24 MR. DeRITA: Objection to form. 12:03
25 THE WITNESS: The literature is very 12:03

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2 MR. WALL: This is a good time to 12:35
3 break for lunch. 12:35

4 THE VIDEOGRAPHER: We are off the 12:35
5 record at 12:34. 12:35

6 (Recess taken.)

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3 AFTERNOON SESSION

4 1:18 p.m.

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6 THE VIDEOGRAPHER: We are back on the 13:19
7 record at 1:18. 13:19

8 BY MR. WALL: 13:19

9 Q. All right. Let's pick up with sort of 13:19
10 the basic question of why you're simulating that 13:19
11 the NEA is like a merger. So let me begin and 13:19
12 let's see if we can agree on a few things. 13:19

13 So you agree that technically, 13:19
14 formalistically, the NEA is not a merger; right? 13:19

15 A. That's right. It's an agreement 13:19
16 between JetBlue and American. 13:19

17 Q. It's a bilateral contract or set of 13:19
18 contracts. 13:19

19 A. Okay. 13:19

20 Q. So American doesn't have any right to 13:19
21 choose board members for JetBlue or vice versa; 13:19
22 right? 13:20

23 A. Okay. 13:20

24 Q. I mean, is that consistent with your 13:20
25 understanding? 13:20

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2 A. Yes, it is.

3 Q. Okay. The NEA is not going to lead to
4 the elimination of the JetBlue brand; correct?

5 A. I haven't seen any evidence that it
6 would.

7 Q. Okay. Nor the American brand; right?

8 A. Same for American.

9 Q. Okay. And you haven't seen any
10 evidence that the NEA requires JetBlue to adopt
11 or conform to American's so-called legacy or
12 general network carrier business model, have you?

13 A. No, I don't think there is language
14 that requires JetBlue to do that.

15 Q. There is no permanent transfer of
16 assets through the NEA, is there?

17 A. No.

18 Q. And there is no pricing coordination
19 in the NEA, is there?

20 A. I do not believe the NEA provides a
21 structure for JetBlue and American to talk about
22 the prices that they're setting.

23 Q. There is no aggregate capacity
24 coordination of the kind that Dr. Town talks
25 about in his report in connection with capacity

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2 discipline, is there? 13:21

3 A. The NEA is a bilateral contract 13:21
4 between American and JetBlue, and I believe 13:21
5 Professor Town when he talks about capacity 13:21
6 coordination, what you're referring to is 13:21
7 something more industry-wide, and the contract is 13:21
8 going to cover coordination of capacity between 13:21
9 JetBlue and American specifically. 13:21

10 Q. But it doesn't -- they do not discuss 13:21
11 or coordinate the setting of their industry-wide 13:21
12 capacity; the size of their fleets, for example, 13:21
13 those sorts of things? 13:22

14 A. Certainly I think that the results 13:22
15 would have bearing on that. But I believe what 13:22
16 the agreement allows for is coordination on 13:22
17 capacity in routes that connect to an NEA 13:22
18 airport. 13:22

19 Q. Okay. So then go ahead and -- in 13:22
20 light of all of that, go ahead and just explain 13:22
21 for the record why it is that you believe that 13:22
22 the competitive effects of the NEA can be fairly 13:22
23 addressed through a merger simulation. 13:22

24 A. Sure. First of all, for 13:22
25 clarification, the model that I'm using 13:22

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2 characterizes the incentives that are created by 13:23
3 the NEA specifically, not those of a generic 13:23
4 merger. So I prefer to call it just the 13:23
5 simulation model. 13:23

6 The model incorporates that when the 13:23
7 NEA is in place and in effect on particular 13:23
8 routes, that JetBlue benefits if American's 13:23
9 revenue increase, and American benefits if 13:23
10 JetBlue revenue increase. And that creates 13:23
11 incentives, according to economic theory, to 13:23
12 raise price in a way that's mutually beneficial 13:23
13 for JetBlue and American along the particular 13:23
14 markets that I've studied. And that's laid out 13:23
15 in Section 4 of the report. 13:24

16 Of course the NEA is more broad than 13:24
17 only the sharing of revenue. It also creates an 13:24
18 avenue for capacity coordination. And I've 13:24
19 considered the arguments that were put forth by 13:24
20 the defendants' economist in the course of the 13:24
21 investigation, and also put forth by Dr. Israel 13:24
22 in his expert report that the NEA would provide 13:24
23 unilateral incentives for each party to expand 13:24
24 output. 13:24

25 And I've pointed out both in my report 13:24

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2 and in my initial report, reply report, that it 13:24
3 would be inappropriate to consider those 13:25
4 unilateral incentives in a context in which 13:25
5 JetBlue and American are coordinating. 13:25

6 In fact, if they were to act on the 13:25
7 unilateral incentives of the MGIA to expand 13:25
8 capacity instead of coordinating capacity with 13:25
9 each other, the effect would be that each party 13:25
10 would subsidize unprofitable expansion of the 13:25
11 other and thereby exploit the other partner. 13:25
12 Joint profits would go down. 13:25

13 And therefore, it does not seem 13:25
14 reasonable or likely that decisions taken in the 13:25
15 midst of capacity coordination would undermine or 13:25
16 alter the effects of revenue sharing on pricing 13:25
17 incentives that the agreement creates. 13:26

18 And that is the way that my model 13:26
19 captures the incentives that are created by the 13:26
20 NEA. 13:26

21 Q. Okay. Thank you. 13:26

22 So in Section 4.1 of your initial 13:26
23 report, around page 21, you lay out your argument 13:26
24 that incentive alignment, not a change in 13:26
25 coordination or control, is what makes a 13:26

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2 collaboration akin to a merger; right? 13:26

3 A. Well, you know, mergers can create a 13:26
4 whole host of effects involving control that are 13:26
5 not going to be in play here. But the incentives 13:26
6 created by the NEA for pricing are going to be 13:26
7 the same incentives that are created by a merger 13:26
8 among competitors with respect to pricing in 13:27
9 terms of the ability to recapture sales that are 13:27
10 lost when prices go up. 13:27

11 Q. Okay. So where did you get your 13:27
12 theory that incentive alignment and not also 13:27
13 coordination or control permits one to analyze a 13:27
14 collaboration as if it were a merger? 13:27

15 A. I've analyzed the terms of the NEA and 13:27
16 analyzed the incentives that they create. And my 13:27
17 analysis of those incentives is that by sharing 13:27
18 revenue the NEA creates something that an 13:27
19 economist would call upward pricing pressure, 13:27
20 which is a reference to the notion that when one 13:27
21 firm, maybe American, raises price and loses 13:28
22 customers, it's able to recapture some customers 13:28
23 on the products of the other airline, maybe 13:28
24 JetBlue. 13:28

25 And here "recapture," that might be a 13:28

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2 merger term. But the point is you divert sales 13:28
3 in a way that the lost sales with the NEA in 13:28
4 effect are still revenue that's meaningful. 13:28

5 And so this is a straightforward 13:28
6 conclusion of economic theory in its application 13:28
7 to the NEA agreement. 13:28

8 Q. I think I gave you a vague question 13:28
9 here. Let me put it to you this way. I can find 13:28
10 literature, for example, involving the 13:28
11 competitive effects of partial acquisitions which 13:28
12 indicates that incentives along with coordination 13:28
13 and control matter to an analysis. But I cannot 13:29
14 find anything saying that coordination or control 13:29
15 do not matter and so you can focus solely on 13:29
16 incentives. 13:29

17 Can you point me to something? 13:29

18 A. The article that I cite to construct 13:29
19 modified Herfindahl indices -- and I will give 13:29
20 you the cite here in a moment -- 13:29

21 Q. Is that the Salop O'Brien article? 13:29

22 A. Yeah, the Salop O'Brien article 13:29
23 provides a framework for understanding agreements 13:29
24 that involve changes in incentives and changes in 13:29
25 control where the effect of the incentives can be 13:29

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2 capacity decisions along the routes, along the
3 markets that I examined in my report. They touch
4 the NEA airports.

5 Q. And specifically does that mean that
6 they jointly set capacity on those routes as they
7 would if they were merged?

8 A. No, I don't need to make an assumption
9 about that. A merger, as you know, has a whole
10 host of other issues related to control that
11 could introduce different outcomes than you would
12 get from a pure change in incentives.

13 Q. So for the purpose of this sentence in
14 footnote 68, any coordination of capacity on the
15 route suffices?

16 A. The NEA coordination. The
17 coordination terms that are laid out in the NEA
18 suffice.

19 Q. Why do they suffice?

20 A. Because if they can coordinate
21 capacity, then they're going -- they have an
22 incentive to realize the higher profits that the
23 NEA allows and to avoid any exploitative capacity
24 growth that would or could occur if either of the
25 carriers makes unilateral capacity decisions in

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2 its own interest at the expense of its partner. 14:33

3 Q. But doesn't that just return us back 14:33
4 to the idea that they are setting capacity in 14:33
5 order to promote joint profit maximization as 14:34
6 they would if they were merged? 14:34

7 A. I haven't modeled specifically the 14:34
8 capacity-setting process. However, I don't see a 14:34
9 reason that through the coordination process that 14:34
10 American and JetBlue would take -- would refrain 14:34
11 from obtaining outcomes that don't undermine the 14:34
12 profits they're able to get by softening price 14:34
13 competition. 14:34

14 Q. But you changed a lot of my question. 14:34
15 What I'm asking you is the profit-maximizing 14:34
16 solution that they reach under your model, at 14:34
17 least on nonstop overlap routes, is the same as 14:34
18 they would reach in a merger; right? 14:35

19 A. If the merger is modeled as involving 14:35
20 a change in incentives and internalization of 14:35
21 pricing incentives, as many models are but not 14:35
22 all, and if we set aside the presence of any 14:35
23 smaller connect competitors on the nonstop 14:35
24 routes, then yes, that would be correct. 14:35

25 Q. Okay. So you then contrast what you 14:35

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2 said occurs as a mechanical matter with a 14:35
3 behavior point. You say they behave as though 14:35
4 they share profits according to a static formula 14:35
5 based on their pre-NEA capacities; that is, as 14:35
6 though profits are split according to fixed 14:35
7 proportions. 14:35

8 So that turns out to be a ratio of 14:36
9 57 percent for JetBlue and 43 percent for 14:36
10 American; right? 14:36

11 A. Yes, that's what I've been able to 14:36
12 calculate. 14:36

13 Q. Okay. So what you're saying, then, is 14:36
14 that they go through the motions of acting 14:36
15 consistent with the terms of the MGIA but behave 14:36
16 as though at all times JetBlue will get 14:36
17 57 percent of the revenues and American will get 14:36
18 43 percent. 14:36

19 A. In the pricing -- in the pricing 14:36
20 decision, yes, that's what I assume. 14:36

21 Q. Okay. Do you have any reason to 14:36
22 believe that at the present time American and 14:36
23 JetBlue with respect to the NEA routes are 14:36
24 behaving as though they are sharing profits in 14:36
25 these fixed proportions? 14:36

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2	A. Yes, I do.	14:36
3	Q. And what is that?	14:36
4	A. The airline industry, as I've	14:37
5	articulated it, and also Dr. Israel has	14:37
6	articulated it, can be conceptualized as	14:37
7	involving two decisions: one, capacity, and	14:37
8	then pricing. And that makes sense because in	14:37
9	order for airlines to post prices and for	14:37
10	consumers to buy tickets, there's got to be a	14:37
11	route that's been scheduled.	14:37
12	At the time prices are set, therefore,	14:37
13	the capacities are predetermined and already set.	14:37
14	And so in effect, when it comes to the pricing	14:37
15	decision, the fixed proportion is the proper	14:37
16	characterization of the economic incentives of	14:37
17	JetBlue and American under the NEA insofar as it	14:38
18	comes to their pricing.	14:38
19	Q. I didn't ask you whether it was the	14:38
20	proper characterization. I asked you more of an	14:38
21	empirical question.	14:38
22	A. Oh.	14:38
23	Q. Do you have any evidence that they are	14:38
24	in fact behaving as though they are sharing	14:38
25	profits in these fixed proportions?	14:38

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2 A. And apologies. I gave you an answer 14:38
 3 based on economic theory. You know, as we've 14:38
 4 gone over a number of times and as I've outlined 14:38
 5 in my report and reply report, I don't think a 14:38
 6 comparison of data from before and after is an 14:38
 7 appropriate way to understand the competitive 14:38
 8 effects of the NEA either directly on prices or 14:38
 9 on the behavior of carriers. 14:38

10 So no, I don't have empirical evidence 14:38
 11 that they're behaving this way. 14:38

12 Q. Okay. Could you turn to page 189 of 14:38
 13 your initial report. 14:39

14 MR. WALL: It's 2:40. I don't want to 14:39
 15 have to do math at this point. I apologize to 14:39
 16 everybody. 14:39

17 BY MR. WALL: 14:39

18 Q. So -- okay. So 14.2 entitled "Supply" 14:39
 19 introduces a set of equations. 14:40

20 Am I correct that the equation in 14:40
 21 Paragraph 400 and the beginning of the bottom of 14:40
 22 page 189 captures the logic of your simulation? 14:40

23 MR. DeRITA: Objection to form. 14:41

24 THE WITNESS: This equation shows the 14:41
 25 objective function of JetBlue and American in 14:41

1 N. MILLER

2 C E R T I F I C A T E

3

4 DISTRICT OF COLUMBIA

5 I, JOHN L. HARMONSON, a Notary Public
6 within and for the District of Columbia, do
7 hereby certify that NATHAN H. MILLER, Ph.D., the
8 witness whose deposition is hereinbefore set
9 forth, was duly sworn by me and that such
10 deposition is a true record of the testimony
11 given by such witness.

12 That before completion of the
13 proceedings, review and signature of the
14 transcript was requested.

15 I further certify that I am not related
16 to any of the parties to this action by blood or
17 marriage; and that I am in no way interested in
18 the outcome of this matter.

19 IN WITNESS WHEREOF, I have hereunto set
20 my hand this 22nd day of August, 2022.

21

22



23 _____
JOHN L. HARMONSON, RPR

24

My commission expires: 04/14/26

25